

106TH CONGRESS
2D SESSION

S. 2604

To amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2000

Mr. DORGAN (for himself and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 49, United States Code, to provide that rail agreements and transactions subject to approval by the Surface Transportation Board are no longer exempt from the application of the antitrust laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rail Competition En-
5 forcement Act”.

1 **SEC. 2. TERMINATION OF EXEMPTION.**

2 (a) IN GENERAL.—Section 10706 of title 49, United
3 States Code, is amended—

4 (1) by striking “Board, and the Sherman Act
5 (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C.
6 12, et seq.), the Federal Trade Commission Act (15
7 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson
8 Tariff Act (15 U.S.C. 8 and 9), and the Act of June
9 19, 1926 (15 U.S.C. 13, 13a, 13b, 21a) do not
10 apply to parties and other persons with respect to
11 making or carrying out the agreement. However,” in
12 subsection (a)(2)(A) and inserting “Board, how-
13 ever”;

14 (2) by striking the second sentence of sub-
15 section (a)(4);

16 (3) by striking “However, the” in subsection
17 (a)(4) and inserting “The”;

18 (4) by striking “Board, and the antitrust laws
19 set forth in paragraph (2) of this subsection do not
20 apply to parties and other persons with respect to
21 making or carrying out the agreement.” in sub-
22 section (a)(5) and inserting “Board.”; and

23 (5) by striking subsection (e) and inserting the
24 following:

25 “(e) APPLICATION OF ANTITRUST LAWS.—

1 “(1) IN GENERAL.—Nothing in this section ex-
 2 empts a proposed agreement described in subsection
 3 (a) from the application of the Sherman Act (15
 4 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et
 5 seq.), the Federal Trade Commission Act (15 U.S.C.
 6 41 et seq.), section 73 or 74 of the Wilson Tariff
 7 Act (15 U.S.C. 8 and 9), or the Act of June 19,
 8 1926 (15 U.S.C. 13, 13a, 13b, 21a).

9 “(2) ANTITRUST ANALYSIS TO CONSIDER IM-
 10 PACT.—In reviewing any such proposed agreement
 11 for the purpose of any provision of law described in
 12 paragraph (1), the Board and any other reviewing
 13 agency shall take into account, inter alia, the impact
 14 of the proposed agreement on shippers and on af-
 15 fected communities.”.

16 (b) COMBINATIONS.—Section 11321 of title 49,
 17 United States Code, is amended—

18 (1) by striking “The authority” in subsection
 19 (a) and inserting “Except as provided in section 11
 20 of the Clayton Act (15 U.S.C. 21(a)), the author-
 21 ity”;

22 (2) by striking “is exempt from the antitrust
 23 laws and from all other law,” and inserting “is ex-
 24 empt from all other law (except the antitrust
 25 laws),”; and

1 (3) by adding at the end thereof the following:

2 “(c) APPLICATION OF ANTITRUST LAWS.—

3 “(1) IN GENERAL.—Nothing in this section ex-
 4 empts a transaction described in subsection (a) from
 5 the application of the Sherman Act (15 U.S.C. 1 et
 6 seq.), the Clayton Act (15 U.S.C. 12 et seq.), the
 7 Federal Trade Commission Act (15 U.S.C. 41 et
 8 seq.), section 73 or 74 of the Wilson Tariff Act (15
 9 U.S.C. 8 and 9), or the Act of June 19, 1926 (15
 10 U.S.C. 13, 13a, 13b, 21a).

11 “(2) ANTITRUST ANALYSIS TO CONSIDER IM-
 12 PACT.—In reviewing any such transaction for the
 13 purpose of any provision of law described in para-
 14 graph (1), the Board and any other reviewing agen-
 15 cy shall take into account, inter alia, the impact of
 16 the transaction on shippers and on affected commu-
 17 nities.”.

18 (c) CLAYTON ACT.—

19 (1) APPLICATION OF ACT.—Section 7 of the
 20 Clayton Act (15 U.S.C. 18) is amended by striking
 21 “Surface Transportation Board,” in the last para-
 22 graph of that section.

23 (2) FTC ENFORCEMENT.—Section 11(a) of the
 24 Clayton Act (15 U.S.C. 21(a)) is amended by strik-
 25 ing “title 49, United States Code;” and inserting

1 “title 49, United States Code (except for agreements
 2 described in section 10706 of that title and trans-
 3 actions described in section 11321 of that title);”.

4 (d) CONFORMING AMENDMENTS.—

5 (1) The heading for section 10706 is amended
 6 to read as follows:

7 **“§ 10706. Rate agreements”.**

8 (2) The chapter analysis for chapter 107 of title
 9 49, United States Code, is amended by striking the
 10 item relating to section 10706 and inserting the fol-
 11 lowing:

“10706. Rate agreements.”.

12 **SEC. 3. EFFECTIVE DATE.**

13 The amendments made by section 2 apply to any
 14 agreement or transaction submitted to the Surface Trans-
 15 portation Board after December 31, 1999.

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